



Juvenile Injustice: Access to Counsel across Nebraska

Children facing charges deserve the advice and counsel of a qualified attorney. Most of us call a mechanic when our car breaks down; we file our taxes with the help of an accountant. We consult a doctor when we have a health concern. Navigating a court proceeding, where the judge's decisions can have grave consequences, similarly requires specialized professional assistance. Youth especially need legal counsel, for practical and developmental reasons.

Practically, youth encounter the same problems that anyone would without a lawyer in court: not being equipped with knowledge of the legal process and lacking an in-depth understanding of their own rights and possible consequences. On top of that, young people's brains are still developing, making them more susceptible to social pressure and less capable of rational decision-making. Research has shown that youth under the age of 16 are particularly unable to weigh the long-term consequence of potential actions.¹ Adolescents are also more likely to inherently comply with authority figures,² which may increase the likelihood that a youth could be coerced into an action in court that may not be in his or her best interest. In fact, research demonstrates that without counsel, youth are less likely to take advantage of rights they have during court proceedings, such as to defend themselves against charges made, protest detention, or ask for sentencing alternatives.³ Because of the complex nature of legal proceedings, having an attorney present to provide expertise and guidance for a youth can make the difference between justice served or justice denied.

¹ Laurence Steinberg et al, "Age Differences in Future Orientation and Delay Discounting," *Child Development* 80 (2009): 37, doi: 10.1111/j.1467-8624.2008.01244.x.

² Grisso et al, "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," *Law and Human Behavior* 27 (2003): 357, doi: 0147-7307/03/0800-0333/1.

³ Janet E. Ainsworth, "The Court's Effectiveness in Protecting the Rights of Juveniles in Delinquency Cases," *The Future of Children* 6 (1993): 67, https://www.princeton.edu/futureofchildren/publications/docs/06_03_04.pdf.

What does Nebraska law say about children’s right to counsel?

Having an attorney present during proceedings in the juvenile justice system is not only important for youth, but a guaranteed constitutional right. Nearly fifty years ago, the Supreme Court case *In Re Gault* determined that juveniles have the same rights as adults in criminal proceedings as protected by the 14th Amendment, including notification of the right to counsel and the availability of an attorney to be provided at no cost if finances are an issue.⁴

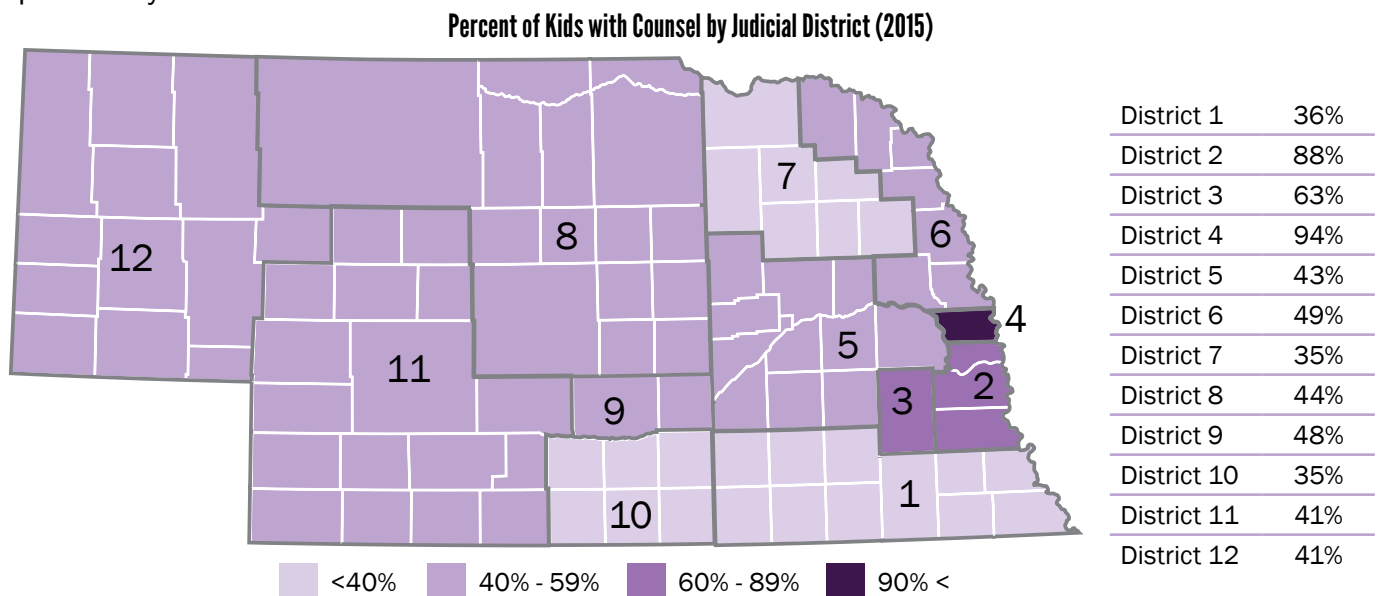
The right to counsel in juvenile proceedings is also enshrined in Nebraska statute.⁵ The law is meant to protect children at every stage of legal proceedings, and requires the court to advise youth, along with their parents, of their right to an attorney and that legal counsel can be provided at no cost if they are unable to afford it.⁶ In Nebraska, any charge in the juvenile court can expose a child to confinement, out-of-home placement, court-ordered treatment, and months or even years of probation. With the exception of “status offenses” (behaviors such as truancy, which would not be criminal if the defendant were not a child), any charge can also lead to commitment to one of Nebraska’s two juvenile prisons. Because of the potentially serious consequences that can result in any juvenile court case, the law does not distinguish between types of charges when it comes to the right to a lawyer.

Additionally, recent legislation going into effect in July 2016 will require the appointment of counsel the moment a charge is filed in juvenile court – but only in counties with 150,000 or more inhabitants. Statewide, youth will not be allowed to waive (give up) their right to a lawyer in certain high-stakes situations: at a detention hearing, when the prosecutor seeks to transfer the case to criminal court, when an out-of-home placement is sought, or when the child facing charges is under the age of 14.⁷

What does the data show?

Access to counsel across Nebraska

Statewide, only six out of ten youth received access to counsel.⁸ However, rates varied dramatically by district. In some regions, as few as 35% of all children charged in the juvenile court received the advice and help of a lawyer.



⁴*In Re Gault*, National Juvenile Defender Center, <http://njdc.info/practice-policy-resources/united-states-supreme-court-juvenile-justice-jurisprudence/in-re-gault>.

⁵Nebraska Rev. Statute 43-272(1), <http://nebraskalegislature.gov/laws/statutes.php?statute=43-272>.

⁶*Ibid*.

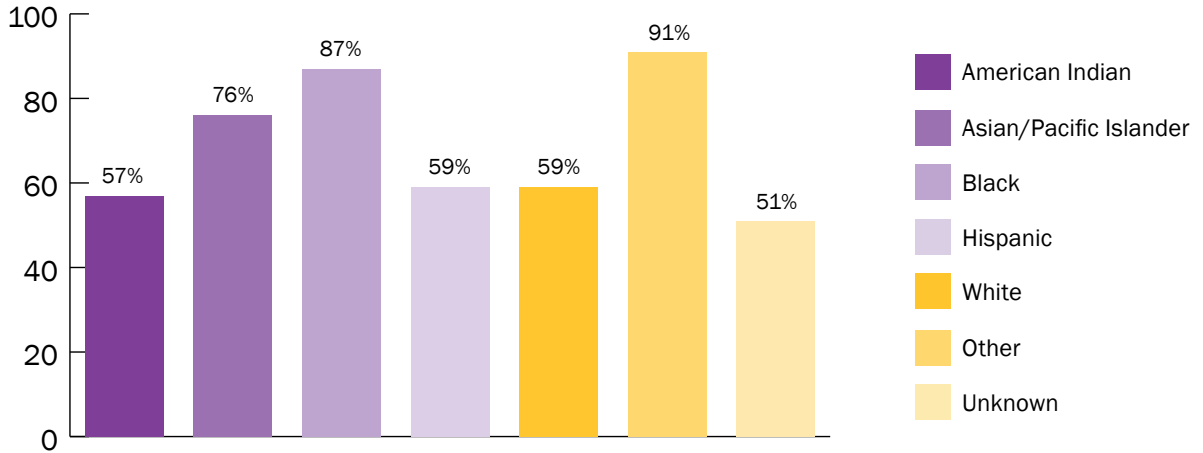
⁷LB 894: Nebraska’s 104th Legislature, second session. Passed April 2016, effective July 2016. Slip law copy available at <http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB894.pdf>.

⁸Nebraska Juvenile Justice System: Statistical Annual Report 2015 (Administrative Office of the Courts and Probation, 2015), 20, <https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/reports/courts/2015-juvenile-justice-system-statistical-annual-report.pdf>.

Access to counsel by race/ethnicity

Racial disparity exists in access to counsel across the state, perhaps due to the fact that higher percentages of youth in urban areas are appointed counsel, while youth in rural areas are less frequently given that right automatically. This may explain why black youth, who predominately live in Nebraska's urban centers, have a high rate of representation.

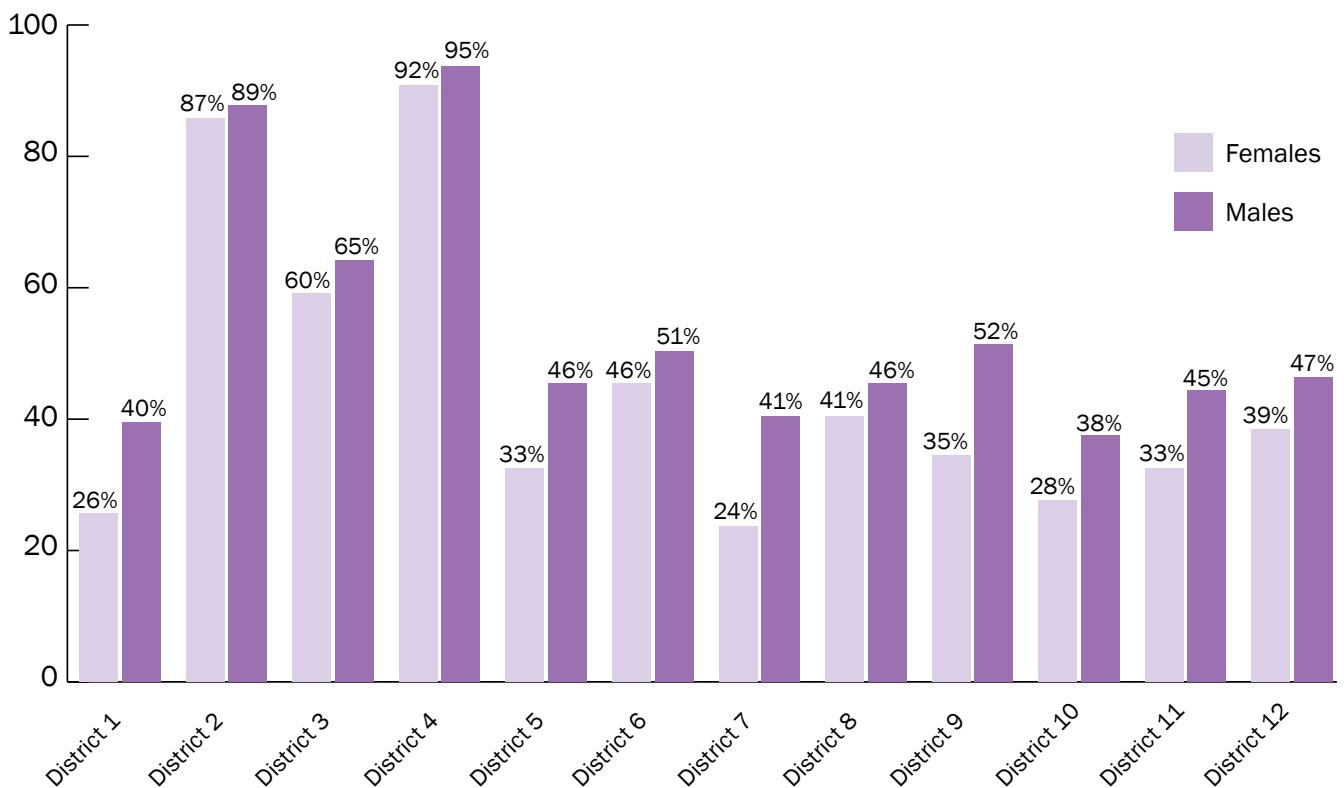
Access to Counsel by Race & Ethnicity (2015)



Access to counsel by gender

Finally, access to counsel in the state is skewed by gender. Consistently, boys enjoy higher rates of legal counsel than girls do. The reasons for this disparity are unclear.

Access to Counsel by Gender by Judicial District (2015)



What does the data mean?

If having a lawyer in the juvenile court is not just important, but protected by Nebraska law and the U.S. Constitution, then how can rates vary across the state or by gender and race? Why don't all young people have lawyers?

The answer is simple: because youth are allowed to waive their right to counsel after they have been informed of their right to it, and this process can look very different in different places and cases. In some Nebraska counties, 70-75% of youth in court waive their attorney.⁹ One Nebraska county reported a 75% waiver rate, but a neighboring county had 75% of youth with counsel,¹⁰ implying that local practices in counties heavily influence waivers.

Some of these local practices may be influenced by court officials with over-loaded case dockets. As court observers discovered in certain Nebraska juvenile court hearings, "the portion of the hearing in which children waived counsel tended to be perfunctory and rushed, so that children and their parents did not fully understand the import of waiving counsel... In most counties, the child did not have an opportunity to consult with counsel on the issue of waiver."¹¹ In fact, up to 80-90% of Nebraska youth are allowed to waive counsel without having an opportunity to talk to an attorney first.¹² For youth whose brains are still developing, not having their right to an attorney comprehensively explained to them can have serious ramifications.

Conclusion and Recommendations

Nebraska children's access to legal counsel should not be determined by geography, charge, race or gender. To best protect our kids, we recommend:

Appointing a lawyer early in every case: All too often, youth waive counsel without adequately understanding the proceedings, the possible consequences, or the meaning of the rights they are giving up. Because charges brought against youth in juvenile court can have serious consequences, and decisions regarding probation orders or even incarceration can happen quickly, we should ensure children have advice and counsel as early as possible in the proceedings. Appointing a lawyer when charges are filed permits children and their parents to get sound legal advice before the first court appearance, come into court better informed and prepared to go forward, and to know whom to call with questions or concerns at any point in the process. This is already the practice in portions of the state, and should be the status quo everywhere Nebraska children are facing trial.

Eliminating practices that encourage waiver: The right to a lawyer is a foundation of America's system of justice, and every defendant coming before the court is entitled to competent representation. Practices that encourage children to waive their constitutional right to an attorney without full understanding are unlawful and should be eradicated. Judges should ensure that youth fully understand their right to an attorney by using developmentally appropriate language. Court officials should account for children's impressionability and take strides to avoid inadvertently pressuring youth into pleading. By carefully protecting our children's rights, we create a more just society and ensure that young people facing charges have better opportunities to be successful in the juvenile court system.

⁹Jessie Beck, Patricia Puritz, and Robin Walker Sterling, *Nebraska Juvenile Legal Defense: A Report on Access to Counsel and Quality of Representation for Children in Nebraska* (Washington, D.C.: National Juvenile Defender Center, 2009), <http://njdc.info/wp-content/uploads/2013/11/FINAL-Nebraska-Assessment-Report.pdf>.

¹⁰*Ibid*, 22.

¹¹*Ibid*, 26.

¹²*Ibid*, 21.